

Exploring Discrepancies in the Utilization of Joint Marital Assets: A Normative-Sociological Analysis

Fazlon Umar^{1*}, Cecep Soleh Kurniawan²

¹ Universitas Islam Al-Aziziyah Indonesia (UNISAI), Indonesia

² Universiti Islam Sultan Sharif Ali, Brunei Darussalam

Email: fazlonumar5@gmail.com^{1*}, soleh.kurniawan@unissa.edu.bn²

ABSTRACT

Joint assets in marriage encompass all assets acquired after marital status is established through a legal union and are jointly owned by both spouses or held in joint names acquired simultaneously during marriage. Indonesian Positive Law, including Law no. 16 of 2019 concerning Marriage, the Compilation of Islamic Law, and the Civil Code (KUHP), governs the utilization of joint property in marriage, ensuring equal rights for both parties. However, discrepancies exist between legal provisions and public understanding regarding the use of joint marital assets. This study, conducted in Trienggadeng Pidie Jaya, employs qualitative methods to explore the community's comprehension of joint property using Indonesian Positive Law as an analytical framework. It adopts a normative-sociological approach, treating Indonesian Positive Law as the basis for analyzing societal perceptions and behaviors related to collective property. The research reveals discrepancies between normative rules and public understanding of the regulations governing the use of joint marital assets.

Keywords: Joint Assets; Indonesian Positive Law; Comprehension; Utilization.

INTRODUCTION

Marriage is an event that occurs through a sacred process, becoming a spiritual and physical bond between a man and a woman as husband and wife. This sacred bond of marriage not only unites the two parties in a household or simply as a family, but it also entails legal consequences for the husband and wife.

The consequences of marriage as stipulated in Law No. 16 of 2019 concerning Amendments to Law No. 16 of 2019 concerning Marriage include various legal implications already regulated, including the rights and obligations of each party during the course of the marriage, such as responsibilities towards offspring, and one of them is the consequence regarding joint property (community property) (Law No. 1 of 1974).

The definition of joint property in Article 35 of Law No. 16 of 2019 also explains that "property acquired during marriage becomes joint property, which, in the event of divorce between husband and wife, the property acquired by each

party is considered an inheritance under the control of each party, as long as the parties do not decide otherwise" (Abdul Manan and M. Fauzan, 2021). Furthermore, according to Article 119 of the Civil Code (KUHP), joint property is property acquired by the husband and wife during the marriage. In other words, it can be understood that since a man and woman marry legally, from that moment on, there is a legal unity or mingling of property between husband and wife, as long as not determined otherwise if a marriage agreement is made (Abdul Manan, 2020).

The utilization of joint property in marriage itself is already stipulated in the Compilation of Islamic Law Article 92, which states: "Husband or wife without the consent of the other party is not allowed to sell or transfer joint property" (Nuansa Aulia Editorial Team, 2020). Furthermore, in line with Islamic Law Compilation, in Chapter VIII Property in Marriage Law No. 16 of 2019 concerning Marriage in Article 36 paragraph (1), it is stated: "Regarding joint property, husband and wife may act with the consent of both parties" (Nuansa Aulia Editorial Team, 2020). Additionally, Civil Code Article 140 paragraph (3) in Chapter VII, Part I concerning marriage agreements in general, states: "Furthermore, they have the right to agree that although unity according to the law applies, without the wife's consent, the husband may not transfer or encumber the wife's immovable property, registration documents in the general ledger of public debt, other valuable documents, and debts in the wife's name, unless they are included in the unity, or as long as during the marriage they may be from the wife's side in it" (Burgelijk Wetboek, 2019).

The reality in society is that the implementation of joint property is not fully understood by the public, either upon the solemnization of marriage or during the marriage, both in essence or meaning, the applicable normative rules. Public ignorance mainly occurs regarding the transfer of property that appears as personal ownership, so the matter of responsibility for the use of such property does not require consultation or consent from the other party, husband or wife.

Discussions about joint property have been extensively studied by academics found in literary studies, one of which is a literature review by Jumni Nelli focusing on the issue of the application of community property linked to the obligation of maintenance using the theory of Indonesian Positive Law (Jumni Nelli, 2017). The obligation to provide maintenance aimed at the husband is also linked to the fact that the husband is obliged to take responsibility for the application of a rule regarding community property that has implications for the equitable distribution of community property and the utilization of community property must obtain agreement from both parties. The realization of this community property scheme makes the fulfillment of maintenance a joint task of husband and wife. "Article 80 KHI regarding the types of property that can be

used to provide maintenance, namely personal property and or property acquired by the husband during marriage".

Studies on joint property in marriage have been widely researched, ranging from aspects of fair distribution (Safira Maharani Putri Utami, 2023) to legal consequences and settlement of joint property (Ida Ayu Putu Kristanty Mahadewi, 2023). In the first study, the research results are still practical in nature, focusing on the aspect of distributing joint property with the principle of justice. Meanwhile, in the second study, the settlement of joint property is done by separating the property of both parties. The process of settling disputes about the distribution of joint property is carried out through the best possible means, namely through the path of "family". The utilization of joint property objects in marriage, reasoned through the public's understanding of the application of joint property in marriage, is still very minimal. The majority of studies are still practical in terms of fair distribution of joint property. The novelty in this research is the utilization of joint property objects in marriage as the core of this study, explored through the public's understanding as legal subjects rooted in the understanding of regulations regarding the utilization of joint property objects stipulated in Indonesian positive law.

This study aims to gather information from the public as legal subjects, specifically spouses who have joint property as legitimate ownership. The locus of this research is the Yosomulyo region, a center of civilization for the dissemination of regulatory ideas with diverse levels of education and understanding of joint property. The background above provides the basis for researchers to delve deeper into the public's understanding of the application of joint property and the utilization of joint property objects themselves from each informant in this study, which will then be analyzed by researchers for compliance between public understanding and the rules for the utilization of joint property objects in marriage from the perspective of Indonesian Positive Law.

RESEARCH METHODS

This research employs a qualitative method with a field research approach and a normative-sociological approach. Referred to as normative-sociological research because, although it uses a qualitative field research method, it also has a normative nature, meaning that it refers to legal norms found in Law No. 16 of 2019, the Civil Code, and the Compilation of Islamic Law. Meanwhile, the sociological approach in this research is evident in the discussion concerning the research object, which is based on humans or society involved in this research discussion. In other words, this study examines society's understanding related to the utilization of joint property objects during the course of marriage.

RESULTS AND DISCUSSION

Understanding of Yosomulyo Community Regarding Shared Property.

Based on interviews conducted by the researcher with the community in Yosomulyo, it was found that there are individuals with high (exploratory), moderate (translator-interpreter), and low levels of understanding. Below, the researcher describes the interview results with the respondents regarding their understanding of the normative rules of utilizing common property objects as well as documentation in the form of personal belongings and shared property owned by the respondents along with their management, including:

The first respondent is Mrs. (Y), aged 54, a homemaker with a high school education background, married for 25 years. She admitted to being familiar with the term shared property (*harta gono-gini*), but only understood it in the context of property rights division during divorce, which is useful for dividing assets accumulated during marriage. She and her husband both have personal belongings: a piece of land for Mrs. (Y) and a motorcycle for her husband. However, they agreed that after marriage, these belongings became joint property without a prenuptial agreement. During their marriage, they never discussed or debated the shared property they owned. They believed that shared property only becomes relevant during divorce proceedings to ensure fair distribution.

The second respondent is Mrs. (M), a high school graduate, aged 55, married for 29 years. She was unaware of the implementation of shared property rules during marriage and how normative rules apply to the management or utilization of shared property. She owns gold jewelry as personal belongings, while her husband doesn't have any. However, they share shared property such as two motorcycles, a refrigerator, a washing machine, two wardrobes, a display cabinet, three cellphones, two cows, a piece of land, and two televisions. Mrs. (M) mentioned that her husband often sells or donates belongings without her knowledge, especially mobile phones and cattle, as they are taken care of by someone else away from their residence.

The third respondent is Mrs. (D), a vocational high school graduate, aged 27, married for 5 years. She admitted to not understanding the normative rules regarding the merger of assets from both parties during marriage, especially regarding the utilization of shared property objects. This was due to her lack of knowledge about Indonesian laws. She believed that her husband's assets were also hers. They shared a motorcycle and a piece of land, on which they built their home after marriage. After the researcher explained about shared property, they identified additional shared assets such as a house, two motorcycles, cellphones, a refrigerator, wardrobes, and other household items. Mrs. (D) mentioned that while they never sold shared property without mutual consent, she once donated some clothes to her relatives without realizing they were considered shared property.

Subsequent interviews were conducted with Mr. (BK), a technical high school graduate, aged 54, married for 29 years. He admitted to not understanding the concept of merging assets in marriage. His wife is a homemaker, so he is the sole breadwinner. His wife has gold rings while he owns a bicycle. They share shared property such as cellphones, jewelry, two motorcycles, a refrigerator, a television, and some livestock. He stated that they don't always communicate when selling or donating belongings, especially cellphones, as he considers them personal property. However, he did mention selling two goats to pay off debts and meet household needs, without prior consultation with his wife.

The next interview was with Mrs. (RS), an education graduate, aged 33, married for 8 years. She had a basic understanding of shared property rules due to her work at a Land Deed Making Officer's (PPAT) office in Yosomulyo. While she understood the difference between personal belongings and shared property, she admitted to not fully understanding the normative rules and laws regarding shared property. She and her husband shared assets such as a motorcycle, a piece of land, cellphones, and jewelry, and they communicated when they wanted to sell or donate shared property.

The sixth respondent, Mrs. (MW), an education graduate, aged 40, married for 11 years, also lacked knowledge about the normative rules regarding shared property utilization. She understood the difference between personal belongings and shared property. She and her husband shared assets such as a house, motorcycle, car, land, cellphones, laptop, television, refrigerator, washing machine, wardrobe, chairs, and other household items. They had no prenuptial agreement regarding shared property management, but always communicated regarding the utilization or disposal of shared property.

The last respondent, Mr. (DA), a law graduate, aged 32, married for 5 years, had knowledge about shared property regulations in marriage and its utilization. He and his wife both had personal belongings: his wife owned a motorcycle and he owned a house. They shared assets such as an air conditioner, refrigerator, and washing machine, and always communicated when dealing with shared or personal belongings.

Overall, the community's understanding of shared property varies, influenced by factors such as education and profession. Some have a deep understanding (exploratory), while others have a basic understanding (translation or interpretation). Further education and awareness are needed to ensure a better understanding and proper management of shared property in marriages.

Analysis of Yosomulyo Community's Understanding of Shared Property from the Perspective of Indonesian Positive Law

The application of merging assets derived from the income of husband and wife after marriage, which is then referred to as the implementation of shared property in marriage, certainly involves not only the origins, purposes, and benefits of the implementation of shared property or the types of assets included in shared property, but also the rules regarding the utilization of shared property objects in marriage cannot escape discussion.

The Compilation of Islamic Law regulates the utilization of shared property objects in marriage, stated in Article 92 which reads: "Husband or wife without the consent of the other party is not allowed to sell or transfer shared property." The rule in this article indirectly explains that husbands and wives have the same rights and responsibilities towards their shared property. Furthermore, based on this provision, it can be understood that husbands and wives have joint responsibilities in the maintenance of their shared property, which is essentially the utilization of objects from their shared property.

Article 92 of the Compilation of Islamic Law provides an understanding that in maintaining shared property, if husbands and wives intend to sell or transfer shared property, the consent of the other party is required and applies to all assets counted as shared property. This rule is intended solely to realize family life towards prosperity and happiness and to maintain good relations between husbands and wives.

Chapter VIII of Law No. 16 of 2019 concerning Property in Marriage regarding the utilization of shared property objects is stipulated in Article 36 paragraph (1) which reads: "Regarding shared property, husbands and wives can act with the consent of both parties." Although it does not explicitly mention that the content of this article is intended for the utilization of shared property objects, it can be inferred that in line with the content of Article 92 of the Compilation of Islamic Law, this article aims to explain that in the utilization of shared property objects, husbands and wives can act on the object of shared property with the condition of consent from the other party or mutual agreement especially the intention to transfer, donate, or sell the shared property, because such intentions are not always mutual between husbands and wives, hence the need for consent from the other party to maintain good relations between husbands and wives.

The Civil Code in the second part of Article 124 and Article 125 explain that "The husband alone must manage the joint wealth" which means he is allowed to sell, transfer, and burden it without the intervention of the wife, except in cases mentioned in the third paragraph of Article 140. However, in this case, the husband is not allowed to transfer the property for donation, and in Article 125 it is explained that: "If the husband is not present, or in a state of not being able to express his will, while immediate action is needed, then the wife is allowed to

burden or transfer the goods from the joint property, after being authorized by the District Court."

The exception mentioned in Article 124 of the Civil Code Article 140 paragraph three found in Chapter Seven in Part One concerning general marriage agreements, reads: "Furthermore, they are entitled to agree that although unity is enforced by law, without the wife's consent, the husband may not transfer or burden the wife's immovable property, registration letters in the general ledger about public debt, other valuable letters and debts in the name of the wife if only included by her, or which may enter the marriage from the wife's side." This third paragraph of Article 140 excludes the initial rules in Article 124 and 125, stating that according to this article the husband still may not transfer joint property without the wife's consent if there has been a marriage agreement regarding this matter. A civil law expert argued about marriage property law that the Civil Code adopts the principle of "commingling of assets". Wealth becomes their joint property and if they divorce then the joint wealth must be divided in half so that each gets half.

According to the expert, the principle of marriage property according to the Civil Code is to adopt the principle of full unity, which provides two examples of marriage agreements: the agreement of unity of profit and loss and the agreement of unity of results and income. The agreement of "commingling of profit and loss" means that each party will still have their own property along with items that come to them for free during the marriage (gifts or inheritance), while all income from labor or capital during the marriage will become joint property, as well as all losses or expenses incurred during the marriage will be borne together. The Civil Code states that what is included in the definition of "profit" is "all progress of wealth arising from each person's property, work, and industry".

The expert expressed that according to them legal experts no longer adhere strictly to those words, and according to current teachings, all non-property assets are considered joint property, unless proven otherwise. What is included in the definition of "loss" according to the Civil Code is all debts concerning the husband and wife together and made during the marriage. But in practice, "loss" or verlies is interpreted very broadly, including all household expenses, clothing purchases, doctor's fees, travel expenses, and so on. Regarding the common agreement on fruits and income, people generally think that the words fruits and income are the same as profit and loss. This means making this agreement so that the wife does not suffer losses due to her husband's debts. According to the expert, in the past, people thought that the community of fruits and income did not involve passive assets, but now people have a broader view and accept the existence of joint debts, as long

CONCLUSION

The discussion on "Community Understanding of Shared Property from the Perspective of Indonesian Positive Law" has been presented comprehensively, leading to the conclusion that the Yosomulyo community perceives shared property in marriage as something related to demands in divorce cases, or it can be said that they are unaware of the implementation of shared property. This ignorance impacts the utilization of shared property in marriage, which does not comply with the applicable rules. For instance, it is considered common if one party wishes to sell or donate shared property without the consent of both parties, claiming it as personal ownership or citing family interests without considering whether the asset is shared or not. Meanwhile, Indonesian Positive Law clearly regulates that both parties can act on shared property with the consent of both parties, actions such as selling, donating, and transferring shared property which then affect the status of ownership of shared property.

REFERENCES

- Alfaruqi, D. (2019). *Pembagian Harta Bersama Menurut Kompilasi Hukum Islam Dan Implementasinya Di Pengadilan Agama Jakarta Selatan Perspektif Keadilan Gender*. Jakarta.
- Asnawi, M. N. (2019). *Pembaruan Hukum Perdata: Pendekatan Tematik*. Yogyakarta: UII Press.
- Aulia, T. R. N. (2020). *Kompilasi Hukum Islam (Cetakan ke-8)*. Bandung: Nuansa Aulia.
- Direktorat Pembinaan Badan Peradilan Agama. (2000). *Kompilasi Hukum Islam*. Jakarta.
- Irawan, Y. (2018). *Kepemilikan Hak Atas Tanah Dalam Perkawinan Sebagai Harta Bersama*. *Lambung Mangkurat Law Journal, 3*(1), 10.
- Kuswana, W. S., & Kuswana, W. S. (2012). *Taksonomi Kognitif*. Bandung: Remaja Rosdakarya.
- Asnawi, M. N. (2022). *Hukum Harta Bersama (Kajian Perbandingan Hukum, Telaah Norma, Yurisprudensi, dan Pembaruan Hukum)* (Cetakan ke-2). Jakarta: Kencana Prenada Media Group.
- Mahadewi, I. A. P. K. (2023). *Akibat Hukum Serta Penyelesaian Terhadap Harta Bersama Berdasarkan Hukum Perkawinan*. *Jurnal Kertha Semaya, 9*(1), 112-120. <https://doi.org/10.24843/KS.2020.v09.i01.p10>
- Makangiras, A. S. (2014). *Prinsip-Prinsip Hukum Harta Bersama Dalam Perkawinan Berdasarkan UU Nomor 1 Tahun 1974*. *Lex Privatum, 2*(1), 121.
- Manan, A. (2006). *Aneka Masalah Hukum Perdata Islam di Indonesia*. Jakarta: Kencana Prenada Media Group.
- Manan, A., & Fauzan, M. (2001). *Pokok-pokok Hukum Perdata Wewenang Peradilan Agama*. Jakarta: PT. Raja Grafindo Persada.
- Nawawi, K. (2013). *Harta Bersama Menurut Hukum Islam dan Perundang-undangan di Indonesia*. *Mizan: Jurnal Ilmu Syariah, 1*(1), 14.
- Nelli, J. (2017). *Analisis Tentang Kewajiban Nafkah Keluarga Dalam Pemberlakuan*

- Harta Bersama*. *Jurnal Hukum Islam STAIN Curup Bengkulu, 2*(1).
- Putra, F. K., & Elimartati. (2020). *Persepsi Masyarakat Dan Pemanfaatan Terhadap Harta Bersama Bagi Istri Yang Bekerja Tinjauan Hukum Keluarga Islam (Studi Jorong Padang Koto Tuo Mungka Kecamatan Mungka)*. *Jurnal Integrasi Ilmu Syari'ah, 1*(1), 9.
- Tim Redaksi Nuansa Aulia. (2020). *Kompilasi Hukum Islam (Cetakan ke-8)*. Bandung: CV. Nuansa Aulia.
- Utami, S. M. P., & Dalimunthe, S. N. I. S. (2023). *Penerapan Teori Keadilan Terhadap Pembagian Harta Bersama Pasca Perceraian*. *Jurnal USM Law Review, 6*(1).
- Wetboek, B. (2014). *Kitab Undang-undang Hukum Perdata (Cetakan ke-41)*. Jakarta: PT. Balai Pustaka.
- Yayasan Peduli Anak Negeri. (2018). *Undang-undang Republik Indonesia Nomor 1 Tahun 1974 Tentang Perkawinan*. Pustaka: Yayasan Peduli Anak Negeri.